

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

-----X

IN RE:	:	CASE NO.: 19-24085-shl
	:	
	:	CHAPTER: 13
Juanita Harris,	:	
	:	HON. JUDGE.:
	:	Sean H. Lane
Debtor.	:	
	:	
	:	
	:	
	:	
	:	

-----X

**STIPULATION TO SURRENDER PROPERTY AND FOR
RELIEF FROM THE AUTOMATIC STAY**

WHEREAS, due to a post-petition mortgage default, and pursuant to 11 U.S.C. § 362(d)(1), BSI Financial Services as servicer for U.S. Bank Trust National Association as Trustee of the Lodge Series III Trust (together with any successor or assign, “Movant”), filed a Motion for Relief from the automatic stay, for cause, on April 21, 2020 (ECF Doc. No. 16, the “Motion”), concerning the co-op property commonly known as 40 East Birch Street, 1B, Mount Vernon, NY 10552 (the “Property”); and

WHEREAS, based on the Debtor’s unopposed Request for Loss Mitigation in the initial proposed Ch. 13 Plan filed November 29, 2019 (ECF Doc. No. 3), this Court entered a Loss Mitigation Order on May 7, 2020 (ECF Doc. No. 22, the “Order”), and the Movant and the Debtor thereafter commenced loss mitigation; and

WHEREAS, during said loss mitigation, the Debtor, by her counsel, advised Movant that she now wishes to terminate loss mitigation and surrender the Property; and

WHEREAS, on June 3, 2020, the Debtor filed an Amended Ch. 13 Plan terminating loss mitigation and surrendering the Property (ECF Doc. No. 28, the “Amended Plan”); and

WHEREAS, Movant filed a timely Proof of Claim, Claim No. 9-1, filed on February 5, 2020, evidencing its debt;

NOW, upon the Motion of Friedman Vartolo, LLP, attorneys for Movant, and upon the consent of the Debtor and Debtor's Attorney, it is hereby:

ORDERED, that the Motion is granted on consent as set forth below, and it is further

ORDERED, that upon the entry of this Order, the automatic stay imposed by 11 U.S.C. § 362(a) shall be deemed vacated with respect to the Movant, pursuant to 11 U.S.C. § 362(d)(1), allowing the Movant, its agents, successors and/or assigns in interest, to exercise all rights available to it under applicable state law with respect to the Property; and it is further

ORDERED, that upon the entry of this Order, loss mitigation is terminated, on consent, due to the Debtor's surrender of the Property. Movant shall submit the standard form S.D.N.Y. Termination Order and Final Report for entry under separate cover; and it is further

ORDERED, that the Debtor agrees not to contest any foreclosure of the Property or eviction action concerning the Property, as commenced or continued by Movant, its predecessors-in-interest, its successors-in-interest, and/or its agents or assigns. While co-op foreclosures are generally non-judicial, in the event a judicial action is needed to foreclose, the Debtor consents to judgment in said action; and it is further

ORDERED, that the Debtor surrenders the Property in bankruptcy, as set forth in the Amended Plan; and it is further

ORDERED, that Movant's Proof of Claim, Claim No. 9-1, shall not be paid by the Chapter 13 Trustee; and it is further

ORDERED, that if the sale of the Property results in a deficiency, within sixty (60) days of the entry of this Order, Movant may file an amended Proof of Claim for the unsecured deficiency amount; and it is further

ORDERED, that in the event this case is converted to a case under any other chapter of the U.S. Bankruptcy Code, this Order will remain in full force and effect; and it is further

ORDERED, that the Movant shall promptly report to the Chapter 13 Trustee any surplus monies realized by any sale of the Property; and it is further

ORDERED, that the 14-day stay imposed by F.R.B.P. 4001(a)(3) is hereby waived; and it is further

ORDERED, that this Court shall retain jurisdiction concerning any dispute arising from or relating to this Order.

SO STIPULATED:

By: /s/Juanita Harris
Juanita Harris
40 East Birch Street, Unit 1B
Mount Vernon, NY 10552
Debtor

Date: July 27, 2020

By: /s/Todd S. Cushner
Todd S. Cushner
Cushner & Associates, P.C.
399 Knollwood Road
Suite 205
White Plains, NY 10603
Attorney for Debtor

Date: July 23, 2020

By: /s/Katherine Heidbrink
Katherine Heidbrink, Esq.
Friedman Vartolo, LLP
1325 Franklin Avenue, Ste. 230
Garden City, NY 11530
Attorneys for Movant

Date: July 27, 2020

NO OBJECTION:

By: /s/ Tom Frost

Date: August 3, 2020

Tom Frost, Esq.
Staff Attorney for Krista Preuss
399 Knollwood Road
White Plains, NY 10603
Chapter 13 Trustee

SO ORDERED:

Dated: September 4, 2020

/s/ Sean H. Lane
United States Bankruptcy Judge